IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CWP No.19715 of 2006 (O&M)
Date of decision: 5.7.2007

Sanjiv Kumar Bansal and others

...Petitioner

vs.

Punjab State Electricity Board, The Mall, Patiala

...Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. Ranjiwan Singh, Advocate for the petitioners.
Mr. APS Mann, Advocate for the respondent.

JUDGMENT:

This petition seeks a direction for grant of benefit of leave encashment for 300 days instead of 180 days.

Case of the petitioners is that they were working with the Punjab State Electricity Board (PSEB) and retired on different dates from 30.6.2001 to 30.4.2005. According to Rule 8.21 of the Punjab Civil Services Rules, Volume I, which stood adopted by the PSEB, cash payment equivalent to leave salary of 180 days was admissible. The said policy was, however, changed vide letter

dated 24.11.1988, Anneuxre P.1, in the light of recommendations of the Third Punjab Pay Commission. It was provided that accumulation of earned leave be restricted to 360 days and leave encashment be allowed to 240 days for those who opted for revised provision of restricted accumulation of earned leave. This decision was to be effective from Ist January 1986. The period of 240 days was later raised to 300 days vide letter dated 13.5.1998 in the wake of Fourth Punjab Pay Commission, a copy of which was Annexure P.2. Thereafter, a clarification was issued by the Government of Punjab vide letter dated 29.7.1999 Annexure P.3 that benefit of leave encashment of 300 days was applicable to those who had opted for old leave rules, in absence of which entitlement will be restricted to 180 days leave encashment.

The petitioner gave legal notice dated 11.11.2006, Anneuxre P.7, relying upon a judgment of this Court dated 1.8.2001 in CWP No.16137 of 1999 (**Charan Singh Lamba v. State of Punjab and another)**, Annexure P.4, quashing the clarification dated 29.7.1999 aforesaid. It was also pointed out that the said judgment was affirmed in LPA and SLP was also dismissed against the same. Having received no response, the present petition was filed.

In the reply filed on behalf of respondent Nos. 1 and 2, stand taken is that the petitioner having opted for 180 days leave

encashment, could not be allowed to claim 300 days leave encashment. Scheme for allowing leave encashment to the extent of 240 days was subject to the condition of option being exercised for the same. If option for availing 240 days scheme (later substituted by 300 days) was exercised, the employee had to forego the benefit of unlimited accumulation of leave and was required to restrict accumulation of leave upto 360 days. The petitioners consciously opted for the old scheme allowing leave encashment only upto 180 days and thus, could not seek the benefit of leave encashment for a longer period.

We have heard learned counsel for the parties and perused the record.

Question for consideration is whether after having exercised the option to avail 180 days of leave, the petitioners could later claim longer period of leave encashment.

We find from the judgment of this Court dated 1.8.2001 in **Charan Singh Lamba** (supra) that benefit of longer period of leave encahsment was allowed irrespective of the option and, thus, exercise of option for old leave rules permitting encashment of earned leave of 180 days only was held not to be a bar to claim leave encashment for longer period, which was introduced subsequently. Restriction of benefit to those who had exercised an option for the new rules was held not to be justified. Observations

of this Court are as under:-

> "Going through the letter dated May 13, 1998 (Annexure P.3), it is clear that the 4th Punjab Pay Commission had categorically stated that the admissibility limit for the enhancement of the earned leave at the time of retirement of Government employees shall stand raised from 240 days to 300 days from Ist January, 1996. The letter/clarification dated July 29, 1999 (Annexure P.8), issued by the Finance Department, Government of Punjab which has been reproduced above, is definitely not in consonance with the recommendations of the 4th Punjab Pay commission and as such cannot be sustained.
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> As a consequence, the letter/clarification dated July 29, 1999 (Annexure P.8) is quashed. The petitioner will be entitled to leave encashment for 300 days in lieu of unutilized earned leave as he retired on July 31, 1997. Likewise, in the writ petition No.17950 of 1999, the petitioner-Kirti Kumar will also be entitled to leave encashment for 300 days in lieu of unutilized earned leave lying at his credit."

The above judgment was affirmed by a Division bench of this Court in LPA No.698 of 2002 (**State of Punjab v. Ved Parkash**), decided on 25.4.2006, in following terms:-

> "....We are, therefore, of the opinion that in the light of the advent of the new scheme vide Annexure P.3 and P.6, it would have been

> appropriate for the appellant-State to have offered a fresh option to those employees, who were likely to be affected by the new instructions. Concededly, no option was called for...”

SLP against the order of this Court was dismissed vide order dated 25.9.2006, Annexure P.6.

In view of above, the issue having already been decided by this Court, we do not find any ground to examine the same issue afresh.

Accordingly, this petition is allowed in same terms and the petitioners are held to be entitled to leave encashment for 300 days in accordance with the instructions referred to above.

(Adarsh Kumar Goel)
Judge

July 5, 2007 (Ajai Lamba)
'gs' Judge